

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application Number : 10/087,385 Confirmation No.: 3339
Applicant : Mark L. Beardi
Filed : March 1, 2002
Title : SYSTEM AND METHOD FOR MEASURING AND UTILIZING
POOLING ANALYTICS
TC/Art Unit : 3691
Examiner: : Jung I. LIU
Docket No. : 72167.000280
Customer No. : 21967

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the final Office Action dated July 30, 2008 ("Office Action"), and pursuant to the Pre-Appeal Brief Conference Pilot Program announced in the Official Gazette, Applicant hereby requests a pre-appeal brief conference in the above-referenced case. This Request is being filed with a Notice of Appeal. No amendments are being filed with this Request. Reconsideration and allowance are respectfully requested.

On page 2 of the Office Action, claims 1, 4-9, and 12-16 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Quail Creek Bank Rates Page (hereinafter "Quail Creek") in view of Official Notice (as allegedly evidenced by the above-identified patent application's background of the invention ¶ 0003-0006; hereinafter "Official Notice"). On page 7 of the Office Action, claims 2-3 and 10-11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Quail Creek in view of Official Notice and further in view of U.S. Patent No. 5,799,288 to Tanaka *et al.* (hereinafter "Tanaka"). These rejections are respectfully traversed.

Regarding claim 1, the Examiner alleges that Quail Creek teaches a method for determining a benefit of pooling separate cash accounts into a single pooled account. In particular, the Examiner alleges that Quail Creek teaches the claimed steps of: "determining separate minimum cash balances required in the separate cash account" (pages 1-2), and "determining a pooled minimum cash balance required in the single pooled account" (pages 1-2).

Applicant respectfully disagrees. In contrast, Quail Creek merely teaches various types of checking accounts, saving accounts, and certificates of deposits (CDs) that are available to consumers. Nowhere does Quail Creek disclose, or even suggest, that the various types of accounts available accounts are “separate cash accounts,” and a “single pooled account,” as presently claimed. It appears that the Examiner interprets accounts (e.g., Internet Checking, Personal Savings) having lower minimum balance as “separate cash accounts,” and accounts (e.g., Quail Classic Club, Hi-Yield Advantage) having higher minimum balance as a “single pooled account,” as presently claimed. Applicant respectfully submits that nowhere does Quail Creek disclose, or even suggest, pooling the accounts (e.g., Internet Checking, Personal Savings) having lower minimum balance into a single account (e.g., Quail Classic Club, Hi-Yield Advantage) having higher minimum balance. Moreover, individual consumers would not pool their money in their respective accounts into a single common account for several reasons. First, a single common account may be hard to supervise because each individual consumer may have access to the single common account and therefore each individual consumer may withdraw all the money in the single common account while leaving nothing for other individual consumers that pooled their money into the single common account. Second, a single common account may not protect private interests of consumers because each individual consumer may have access to the single common account and thus all individual consumers may view any transactions taken by an individual consumer. Finally, a transaction taken by an individual consumer may be “blocked” by other individual consumers of a single common account, for example, an individual consumer may write a check to purchase an item, while other individual consumers may cancel the check and therefore “block” the purchase of the individual consumer.

Also, Applicant respectfully submits that Quail Creek merely illustrates a web site screen shot that presents interest rates and annual percentage yields for different types of accounts and financial products (e.g., checking, savings, CDs, loans, etc.) based on minimum balances or term of loan. Applicant respectfully submits there is no teaching or suggestion whatsoever of any feature or functionality that even remotely comprises the steps of “determining separate minimum cash balances required in the separate cash account pages,” or “determining a pooled minimum cash balance required in the single pooled account.” In particular, there is no part of Quail Creek that can reasonably be considered to be “determining” anything, much less the

separate minimum cash balances required in the separate cash account pages, or a pooled minimum cash balance required in the single pooled account.

The Examiner concedes, and Applicant agrees, that Quail Creek does not disclose the steps of: “aggregating the separate minimum cash balances into an aggregated minimum cash balance,” or “determining a difference between the aggregated minimum cash balance and the pooled minimum cash balance, wherein the difference is a benefit of pooling.” However, the Examiner takes Official Notice that the steps of “aggregating the separate minimum cash balances into an aggregated minimum cash balance,” and “determining a difference between the aggregated minimum cash balance and the pooled minimum cash balance, wherein the difference is a benefit of pooling” are old and well-known. The Examiner alleges that the Office Notice is evidenced by ¶ 0003-0006 of “Mark’s background of invention (U.S. Publication No. 2002/0178098).” The Examiner goes on to assert that it would have been obvious to one of ordinary skill in the art to include these steps with the method for determining a benefit of pooling separate cash accounts into a single pooled account of Quail Creek to increase bank interest and decrease associated costs. Applicants traverse this rejection because the purported reference to the above application’s “background of the invention” fails to support the Official Notice. Applicant is perplexed how the excerpts, ¶ 0003-0006, can be deemed to support the taking of Official Notice that the following steps are old and well-known: “aggregating the separate minimum cash balances into an aggregated minimum cash balance,” and “determining a difference between the aggregated minimum cash balance and the pooled minimum cash balance, wherein the difference is a benefit of pooling.” Rather, Applicant respectfully submits that the above excerpts merely discuss drawbacks with traditional pooling techniques, not the specific claimed steps of “determining a difference between the aggregated minimum cash balance and the pooled minimum cash balance, wherein the difference is a benefit of pooling.” Also, Applicant directs the Examiner’s attention to ¶ 0007, where a number of drawbacks with traditional pooling techniques are discussed. Specifically, traditional pooling techniques are conducted on historic data which will inevitably contain one-time irregularities that will distort the data. Accordingly, Applicants continue to traverse this rejection because there is no support in the record for the conclusion that the identified features are “old and well known.” In accordance with MPEP § 2144.03, the Examiner must cite a reference in support of his position.

Indeed, Applicant submits that the proposed combination of Quail Creek with the Official Notice fails to teach or suggest each and every recitation of claim 1. For example, as stated above, Quail Creek merely discloses different interest rates and other particulars associated with different types of accounts, and does not teach or suggest any feature or functionality that can reasonably be considered to determine: (1) separate minimum cash balances required in the separate cash accounts, or (2) a pooled minimum cash balance required in the single pooled account, as required by independent claim 1. Accordingly, even if Quail Creek were combined with the Office Notice as proposed by the Examiner, the resulting combination would not teach or suggest each and every recitation of independent claim 1. For at least this reason, therefore, Applicant respectfully submits that independent claim 1 is allowable over the cited references.

Regarding claim 9, this claim recites subject matter related to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claim 9. Accordingly, it is respectfully submitted that claim 1 is allowable over the cited references for the same reasons as set forth above with respect to claim 1.

Regarding claims 2-8 and 10-16, these claims are dependent upon independent claim 1 or 9. Thus, since independent claims 1 and 9 should be allowable as discussed above, claims 2-8 and 10-16 should also be allowable at least by virtue of their dependency on independent claim 1 or 9. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination. For example, claim 4 recites the method of claim 1, further comprising: pooling the separate cash accounts into the single pooled account if the pooled minimum cash balance is less than the aggregated minimum cash balance. Applicant respectfully submits that the proposed combination of cited references does not teach or suggest the recitations of claim 4.

Lastly, Applicant disputes the Examiner's contention that Applicant did not previously traverse the taking of Official Notice in the rejections of claims 2-16. In particular, Applicant reminds the Examiner that footnote 2 in the previous response clearly requested that the Examiner cite a reference or references for the taking of Official Notice in connection with the rejection of claims 2-16. To be clear, Applicant does not believe there is support in the record for the conclusion that the identified features in the rejections of claims 2-16 are "old and well

known.” In accordance with MPEP § 2144.03, the Examiner must cite a reference in support of his position.

In view of the foregoing, it is respectfully requested that the aforementioned obviousness rejections of claims 1-16 be withdrawn.

Applicant respectfully submits that the application is in condition for allowance and notice to the effect is earnestly solicited. If there are any questions regarding this Request or the application in general, the Examiner is encouraged to contact the undersigned to expedite prosecution.

The Commissioner is authorized to charge any fees due in connection with the filing of this paper to the undersigned's Deposit Account No. 50-0206.

Respectfully submitted,
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